



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 554 OF 2013**

**KAREN NYAMOITA MAGARA .....PLAINTIFF**

**VERSUS**

**KEVIN OMBASA.....DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 17<sup>th</sup> September 2013 in which the Plaintiff/Applicant seeks for the following orders:

1. That the court does order Hellen Nyambeki Ombasa to be enjoined in this suit as the 2<sup>nd</sup> Defendant.
2. That the court does grant leave to the Plaintiff/Applicant to amend the plaint as per the annexed amended plaint.
3. That the amended plaint be deemed duly filed upon payment of the requisite court fees.
4. That amended copies of the plaint and summons be served upon the Defendants.
5. That the costs of this Application be in the cause.

The Application is premised upon the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Karen Nyamoita Magara, sworn on 17<sup>th</sup> September 2013 in which she averred that she filed suit against the Defendant, Kelvin Ombasa, on the basis that as a licensee on her properties namely Plot No. 108 & 127 Urutagwo Mwiruti Women Group (hereinafter referred to as the “suit properties”), the Defendant had commenced constructing a building thereon. She further averred that in his response, the Defendant stated that she sold the suit properties to the proposed 2<sup>nd</sup> Defendant and he annexed a sale agreement purportedly signed by herself and the proposed 2<sup>nd</sup> Defendant. She further averred that the proposed 2<sup>nd</sup> Defendant has presented herself as having purportedly purchased the suit properties from her. She further stated that she has never sold or entered into any agreement of sale with the said Hellen Nyambeki Ombasa in respect of the suit properties and the purported sale agreement is fraudulent and a forgery by the Defendant and the proposed 2<sup>nd</sup> Defendant. She further averred that in light of this background, the proposed 2<sup>nd</sup> Defendant ought to be joined into this suit to enable the court to effectually and completely adjudicate over the questions of ownership and possession of the suit properties. She further stated that in her Plaint, she did not particularize fraud or forgery as she was not

aware of the purported sale agreement being fronted by the Defendant hence the need to amend her Plaintiff.

The Application is contested. The Defendant filed his Grounds of Objection dated 29<sup>th</sup> October 2013 in which he stated that the Application is frivolous, misapprehended and unwarranted and that it is otherwise an abuse of the process of the court and ought to be dismissed.

On the question of the joinder of Hellen Nyambeki Ombasa as a 2<sup>nd</sup> Defendant in this suit, the applicable law is to be found in Order 1 Rule (10) of the Civil Procedure Rules which states as follows:

***“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.***

I have considered the submissions of the Plaintiff on the reason why the said Hellen Nyambeki Ombasa should be joined as the 2<sup>nd</sup> Defendant in this suit. The reason given is that in his Defence, the Defendant stated that the Plaintiff sold the suit properties to his mother, one Hellen Nyambeki Ombasa which entitled him to construct a building thereon. The Defendant also produced a sale agreement purportedly entered into by the Plaintiff with the said Hellen Nyambeki Ombasa for the sale of the suit properties to her. This being the main line of defence by the Defendant is an issue that the court must determine for this suit to be fully adjudicated. I am therefore satisfied that the said Hellen Nyambeki Ombasa should be joined in this suit as the 2<sup>nd</sup> Defendant and do so find.

Further, on the question of whether or not the Plaintiff should be allowed to amend her plaintiff, the relevant law is set out in Order 8 rule 5 (1) of the Civil Procedure Rules which states as follows:

***“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”***

Flowing from my finding that Hellen Nyambeki Ombasa should be joined into this case as the 2<sup>nd</sup> Defendant, I also note the Plaintiff’s submissions that she needs to amend her Plaintiff to include the particulars of fraud and forgery on the part of the Defendants contained in the purported sale agreement between the Plaintiff and the said Hellen Nyambeki Ombasa. On that ground, I also find that the Plaintiff should be allowed to amend her plaintiff as per the annexed amended Plaintiff.

In light of the foregoing, I hereby allow this Application as prayed. Costs shall be in the cause.

**SIGNED AND DELIVERED IN NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2014.**

**MARY M. GITUMBI**

**JUDGE**